

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

V.

CHARLES BURTON RITCHIE, et al.,

Defendants.

Case No. 2:15-cr-00285-APG-PAL

REPORT OF FINDINGS AND RECOMMENDATION

(Mot Suppress – ECF No. 167)

12 Before the court is Defendant Charles Burton Ritchie’s (“Ritchie”) Motion to Suppress
13 Illegally Obtained Evidence (ECF No. 167), which was referred for a Report of Findings of
14 Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB1-4. The court has considered
15 the Motion (ECF No. 167), the government’s Response (ECF No. 187), and Ritchie’s Reply (ECF
16 No. 202) as well as the Joinders to the Motion (ECF Nos. 169, 172) of co-defendants Galecki and
17 Eaton.

BACKGROUND

I. Indictment (ECF No. 1)

20 Ritchie is charged in an Indictment (ECF No. 1) returned October 13, 2015, with conspiracy
21 to engage in financial transactions to promote unlawful activity in violation of 18 U.S.C.
22 § 1956(h); conspiracy to transport funds to promote unlawful activity in violation of 18 U.S.C.
23 § 1956(h); conspiracy to commit mail fraud in violation of 18 U.S.C. § 1349; conspiracy to commit
24 wire fraud in violation of 18 U.S.C. § 1349; conspiracy to manufacture, possess with intent to
25 distribute, and distribute a controlled substance analogue intended for human consumption in
26 violation of 21 U.S.C. §§ 802(32)(A), 813, 841(a)(1), 841(b)(1)(C) and 846; maintaining a drug
27 involved premises and aiding and abetting in violation of 21 U.S.C. § 856(a)(1) and 18 U.S.C. § 2;
28 and conspiracy to misbrand drug in violation of 18 U.S.C. § 371.

1 **II. Superseding Indictment (ECF No. 56)**

2 A Superseding Indictment (ECF No. 56) was recently returned August 24, 2016, with
3 conspiracy to engage in financial transactions to promote unlawful activity in violation of 18
4 U.S.C. § 1956(h); continuing criminal enterprise in violation of 21 U.S.C. § 848; conspiracy to
5 transport funds to promote unlawful activity in violation of 18 U.S.C. § 1956(h); conspiracy to
6 engage in financial transactions to promote unlawful activity in violation of 18 U.S.C. § 1956(h);
7 conspiracy to commit mail fraud in violation of 18 U.S.C. § 1349; conspiracy to transport funds to
8 promote unlawful activity in violation of 18 U.S.C. § 1956(h); conspiracy to commit wire fraud
9 in violation of 18 U.S.C. § 1349; transporting funds to promote unlawful activity and aiding and
10 abetting in violation of 18 U.S.C. § 1956(a)(2)(A) and 18 U.S.C. § 2; conspiracy to manufacture,
11 possess with intent to distribute, and distribute a controlled substance analogue intended for human
12 consumption in violation of 21 U.S.C. §§ 802(32)(A), 813, 841(a)(1), 841(b)(1)(C) and 846;
13 conspiracy to manufacture, possess with intent to distribute a controlled substance analogue to the
14 extent intended for human consumption in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C) and
15 846; maintaining a drug-involved premises and aiding and abetting in violation of 21 U.S.C.
16 § 856(a)(1) and 2; conspiracy to misbrand drug in violation of 18 U.S.C. § 371; conspiracy to
17 launder money instruments in violation of 18 U.S.C. § 1956(h); conspiracy to commit mail fraud
18 in violation of 18 U.S.C. § 1349; mail fraud and aiding and abetting in violation of 18 U.S.C.
19 § 1341 and 18 U.S.C. § 2; conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349; wire
20 fraud and aiding and abetting in violation of 18 U.S.C. § 1343 and 18 U.S.C. § 2; conspiracy to
21 manufacture, possess with intent to distribute, and distribute a controlled substance and a
22 controlled substance analogue to the extent intended for human consumption in violation of 21
23 U.S.C. § 841(a)(1), 841(b)(1)(C) and 846; possession with intent to distribute a controlled
24 substance and a controlled substance analog to the extent intended for human consumption and
25 aiding and abetting in violation of 21 U.S.C. § 841(a)(1) and 841(b)(1)(C) and 18 U.S.C. § 2;
26 conspiracy to manufacture, possess with intent to distribute, and distribute a controlled substance
27 analogue to the extent intended for human consumption in violation of 21 U.S.C. § 841(a)(1),
28 841(b)(1)(C) and 846; manufacture a controlled substance analogue to the extent intended for

1 human consumption and aiding and abetting in violation of 21 U.S.C. § 841(a)(1), 841(1)(C) and
2 18 U.S.C. § 2; distribution of a controlled substance analogue and aiding and abetting in violation
3 of 21 U.S.C. § 841(a)(1), 841(b)(1)(C) and 18 U.S.C. § 2; maintain a drug-involved premises and
4 aiding and abetting in violation of 21 U.S.C. § 856(a)(1) and 18 U.S.C. § 2; and possession of a
5 listed chemical with the intent to manufacture a controlled substance analogue intended for human
6 consumption and aiding and abetting in violation of 21 U.S.C. § 841(c)(1) and 18 U.S.C. § 2.

7 **III. The Motion to Suppress Evidence (ECF No. 167)**

8 Large portions of the current motion to suppress are cut and pasted from an earlier June 22,
9 2016 Motion to Suppress (ECF No. 44) filed by co-defendant Galecki. The court entered a Report
10 of Findings and Recommendation (ECF No. 80) on September 19, 2016, recommending that the
11 motion to suppress be denied because Galecki had not established standing, that is, that he had a
12 reasonable expectation of privacy in the searched premises sufficient to contest the search or search
13 warrant in this case. Neither Galecki nor any of the co-defendants filed objections to the report
14 and recommendation. The district judge therefore affirmed the report of findings and
15 recommendation, accepted and approved them in their entirety, and denied Galecki's Motion to
16 Motion to Suppress (ECF No. 44). *See Order* (ECF No. 110).

17 Ritchie's motion challenges a July 24, 2012 search warrant issued to search a warehouse
18 located at 5435 Desert Point Drive in Las Vegas, Nevada which was executed on July 25, 2012.
19 Ritchie's current motion to suppress argues that evidence obtained from the June 24, 2012 search
20 warrant issued by Magistrate Judge George W. Foley should be suppressed because the affidavit
21 supporting the search warrant contains materially false and misleading statements. Ritchie argues
22 that excised of these false and misleading statements, the warrant fails to establish probable cause.
23 If the court is not inclined to grant the motion to suppress on the moving and responsive papers,
24 Ritchie argues that, at a minimum, the court must conduct a *Franks* hearing because the motion
25 meets his burden of making a substantial showing of deliberate falsehood or reckless disregard,
26 and that but for the affiant's dishonesty, the challenged action would not have occurred.

27 To establish standing to contest the search warrant, Ritchie relies on other statements in
28 the affidavit by the same special agent he accuses of dishonesty in applying for the search warrant.

1 The government opposes the motion arguing that the motion is untimely. The government
2 argues the motion has already been adjudicated in the court's prior report of findings and
3 recommendation, and the district judge's order adopting the report of findings and
4 recommendation and denying the motion. Ritchie has been represented throughout this case by
5 the same counsel. His lawyer was counsel of record at the time co-defendant Galecki filed his
6 motion to suppress on June 22, 2016, but did not join in Galecki's motion. Counsel for Ritchie
7 provides no reason why he did not join in the original motion or file a motion to suppress himself
8 by the motion deadline in effect at that time. Instead, he waited an additional 18 to file this motion.
9 The government maintains the court should not grant the defendants a "second bite of the apple."
10 The government argues that under the principles of *res judicata* the defendants should not be
11 permitted to raise the same issues previously raised in Galecki's earlier motion to suppress.

12 The government also opposes the motion arguing Ritchie's untimely motion has not
13 established that he has standing to contest the search warrant at issue. Specifically, he has not
14 established that he had a legitimate expectation of privacy in the warehouse that was searched.
15 Fourth Amendment rights are personal and may not be vicariously asserted. Ritchie's motion and
16 Eaton's joinder have not sufficiently established standing to challenge the search. Eaton's joinder
17 adds nothing to the substance of the merits of Ritchie's motion. It is each defendants' burden to
18 establish standing.

19 Moreover, the government contends the grounds on which Galecki's initial motion to
20 suppress was denied are the same grounds on which Ritchie's current motion should be denied.
21 Ritchie's motion is based on the same exhibits that were attached to the original motion attacking
22 the affiant's statements and requesting a *Franks* hearing. The motion attached the same 2016
23 unsworn defense investigator's report which the government refuted by the sworn declaration of
24 detective Dockery in support of its opposition to Galecki's motion to suppress. There are no new
25 facts in the instant motion that were not known at the time Galecki filed his original motion to
26 suppress. For these reasons, the court should deny Ritchie's current motion to suppress which is
27 substantially identical to Galecki's prior motion to suppress which the court previously denied.

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1 Ritchie replies that the government's response has failed to address the merits of his motion
2 which Galecki's former counsel failed to insufficiently address. The current motion to suppress
3 establishes that all of the defendants had an objective and subjective expectation of privacy in the
4 warehouse at issue. The reply rhetorically asks how the government can "argue that Defendants
5 exercised dominion and control over the unit, while simultaneously taking the position" they lack
6 standing. The reply also argues that the government's "second bite of the apple" argument is not
7 supported by application of the principles of *res judicata* or collateral estoppel. Here, pretrial
8 deadlines have been repeatedly extended. The trial is still months away. Ritchie and Galecki have
9 been through two trials in Norfolk, Virginia. At the time the motion to suppress was filed, an
10 appeal was still pending in the Fourth Circuit and another trial date set for August 2018 in the
11 District of Alabama. Because of the inadequacies of the first Galecki motion, and because the
12 report and recommendation did not address the merits of the search, the court should do so now.

DISCUSSION

14 The Fourth Amendment secures "the right of the people to be secure in their persons,
15 houses, papers, and effects against unreasonable searches and seizures." U.S. Const. amend. IV.
16 The Fourth Amendment protects reasonable and legitimate expectations of privacy. *Katz v. United*
17 *States*, 389 U.S. 347 (1967). The Fourth Amendment protects "people, not places." *Id.* Evidence
18 obtained in violation of the Fourth Amendment, and evidence derived from it may be suppressed
19 as the "fruit of the poisonous tree." *Wong Sun v. United States*, 371 U.S. 471 (1963). Defendants
20 seeking to suppress evidence obtained pursuant to a search warrant have the burden of establishing
21 standing, that is, that they had both an objective and subjective expectation of privacy in the
22 searched premises or the things seized that society is prepared to accept as reasonable. *Rakas v.*
23 *Illinois*, 439 U.S. 128 (1978); *United States v. Davis*, 332 F. 3d 1163, 1167 (9th Cir. 2003).

24 Co-defendant Galecki filed a nearly identical motion to suppress on June 22, 2016. Neither
25 Eaton nor Ritchie joined in the motion. The current motion is based on nearly identical arguments
26 and supported by the same exhibits, including the 2016 unsworn defense investigator's report of a
27 witness interview. The court found Galecki had not met his burden of establishing standing to
28 contest the search or search warrant issued by Judge Foley for the warehouse at issue in this case.

1 Neither Galecki, nor his co-defendants, objected to the report of findings and recommendation.
 2 As a result, the district judge approved and adopted the recommendation in its entirety and denied
 3 the motion to suppress. A year-and-a-half later, Ritchie filed this nearly identical motion.

4 The current motion relies on the same allegedly false and misleading statements in Special
 5 Agent Behar's affidavit supporting the search warrant. Arguing SA Behar intentionally or
 6 recklessly mislead Judge Foley to obtain the search warrant, Richie now argues the court should
 7 accept portions of Behar's affidavit about the defendants' connection to the warehouse to establish
 8 their standing to challenge the warrant. None of the defendants have provided affidavits,
 9 declarations or an offer of proof supporting their standing to contest the search. Eaton's made no
 10 attempt to establish his standing to contest a search of the warehouse. His two-line Motion for
 11 Joinder (ECF No. 172) states only that he "hereby adopts and incorporates the arguments set forth
 12 in Defendant Ritchie's Motion. Galecki's Motion for Joinder (ECF No. 169) states that he "hereby
 13 joins ... Document 167." The joinder claims his standing "is already asserted in said motion,
 14 including, but not limited to, in footnote 24 of said motion." Footnote 24 of Ritchie's motion cites
 15 excerpts from what purports to be Ritchie's trial testimony in the District of Virginia in January
 16 2017 that Galecki was Ritchie's business partner in Zencense, LLC, "not for tax purposes" but as
 17 a member of the LLC with a twenty percent interest who had "decision making authority", and
 18 was in charge of "procurement".

19 The court finds that the current motion to suppress is actually a motion to reconsider the
 20 court's report of findings and recommendation (ECF No. 80), and the district judge's order (ECF
 21 No. 110) denying Galecki's prior June 22, 2016 motion to suppress. Rirchie is correct that the
 22 parties have stipulated to extend the trial date, calendar call, and motion deadlines several times.
 23 The last two Orders (ECF Nos. 150, 174) granting the parties' stipulations extended the time for
 24 the defendants to file pretrial motions. However, the stipulations specifically provided that the
 25 parties had not reached an agreement "on whether grounds asserted on prior motions briefed before
 26 the court can or cannot be filed at this juncture, which this stipulation does not address." *Id.*

27 Although not expressly authorized by the Federal Rules of Criminal Procedure, motions
 28 for reconsideration may be filed in criminal cases. *United States v. Lopez-Cruz*, 730 F.3d 803, 811

1 (9th Cir. 2013) (“No precise ‘rule’ governs the district court’s inherent power to grant or deny a
 2 motion to reconsider a prior ruling in a criminal proceeding. Rather, the district court’s authority
 3 to revisit a ruling on a suppression motion ‘is within its sound judicial discretion.’”) (quoting
 4 *United States v. Raddatz*, 447 U.S. 667, 678 n.6 (1980)). Courts typically evaluate these motions
 5 under the standards applied to civil motions for reconsideration. *United States v. Hector*, 368 F.
 6 Supp. 2d 1060, 1063 (C.D. Cal. 2005), *rev’d on other grounds*, 474 F.3d 1150 (9th Cir. 2007).
 7 Reconsideration may be appropriate “if the district court (1) is presented with newly discovered
 8 evidence; (2) committed clear error or the initial decision was manifestly unjust; or (3) if there is
 9 an intervening change in controlling law.” *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183
 10 (D. Nev. 2004) (quoting *School Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255,
 11 1263 (9th Cir. 1993)); *see also* LR 59-1. “A motion for reconsideration is not an avenue to re-
 12 litigate the same issues and arguments upon which the court already has ruled.” *W. Shoshone Nat.*
 13 *Council v. United States*, 408 F. Supp. 2d 1040, 1053 (D. Nev. 2005).

14 Although styled a motion to suppress, it is actually a motion to reconsider. The court finds
 15 that Ritchie has not met his burden of establishing reconsideration is appropriate. The motion is
 16 not based any newly discovered evidence. It attaches the same exhibits and the same unsworn
 17 defense investigator’s report that were attached to Galecki’s motion to suppress. The current
 18 motion is not supported by a declaration or offer of proof from any of the defendants in support of
 19 their standing to contest the search at issue. The motion does not allege that the court committed
 20 clear error, or that the initial decision was manifestly unjust. Ritchie has also not established any
 21 intervening change in controlling law. Rather, Ritchie and his co-defendants are merely attempting
 22 to re-litigate the same issues and arguments raised in Galecki’s initial motion to suppress.

23 For these reasons,

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IT IS ORDERED: Defendants Galecki and Eaton' Motions for Joinder (ECF Nos. 169, 172) are **GRANTED**.

3 **IT IS RECOMMENDED** that the Defendant Charles Burton Ritchie's Motion to
4 Suppress Illegally Obtained Evidence (ECF No. 167) be treated as a Motion for Reconsideration,
5 and **DENIED**.

6 DATED this 20th day of June, 2018.

PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE